

OPINION
43-89

February 16, 1943 (OPINION)

SALES TAX

RE: Rule 27

I have your letter of February 16th requesting my interpretation of your sales tax rule 27, a copy of which was enclosed with your letter. It seems to me that the rule is so plainly drawn as to need no interpretation.

The dentist, as such, primarily renders personal services, which, of course, are not taxable. In rendering these personal services, he used instruments which are not taxable. He also uses consumable supplies, such as mercury, silicates, alloys, amalgam, platinum, gold, etc. These are tangible personal property and are actually consumed in performing the services.

If the dentist maintains a supply of mouth washes, dentifrices, tooth brushes, and the like, which he sells to his patients, he is selling these to the patient who is the consumer. If he makes such sale, he is a retail dealer in these items and must collect tax. All other items mentioned clearly under the rule are consumed by the dentist himself in the performance of his services, and the wholesaler which supplies him is selling for use and consumption and must collect sales tax thereon from the dentist.

I have carefully checked the rules in a majority of the states having a sales tax payable by the consumer, such as ours. I find that almost without exception they have a rule which in my opinion is identical in meaning with our rule as interpreted above. The states of New York, Ohio, Washington, California, Iowa, and Michigan are typical. In all of these states, and most of the others, the wholesaler or dental laboratory which supplies the individual dentist with all that he uses in and about his business, is required to collect from the individual dentist the sales tax imposed by the law on the consumer. As showing a typical rule, I give the substance of the New York rule as follows:

"The tax is imposed upon receipts from sales of tangible personal property to persons engaged in a profession who use such property in connection with service they render to others. In this class are to be included all sales of tangible personal property by dental laboratories or supply houses to dentists. The dentist is the consumer of tangible personal property which he uses in the practice of his profession and such sales to him are subject to the tax imposed by the law. Included in the property sold to a dentist, upon which he is required to pay the tax to his vendor are the following: chairs, motors, instruments, x-ray machines, drilling machines, office furniture and fixtures; also platinum, gold, silver, cement and other materials used in

making fillings, inlays, bridge work and false teeth, and fabricated articles used by dentists, when manufactured for him, such as bridges, plates, inlays, teeth, etc".

In some of the states, the rule specifically provides that where the dentist has plates, bridge work, etc. manufactured for him by a dental laboratory, he must pay the dental laboratory a sales tax based on the price to him, and he collects no sales tax on these items from his patients, since the furnishing of these items by him is considered a part of the service performed. In view of the similarity of the rules in these other states, it is my opinion that the sales tax on all materials used by the dentist are subject to tax when bought by him, and not collectible from his patients, in performing services for whom he has consumed these consumable items.

ALVIN C. STRUTZ
Attorney General